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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,791	03/06/2002	Erez Roe	82381	6684

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NATH & ASSOCIATES  
112 South West Street  
Alexandria, VA 22314

EXAMINER

HARRELL, ROBERT B

ART UNIT PAPER NUMBER

2142

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/15/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/090,791

Applicant(s)

ROE ET AL.

Examiner

Robert B. Harrell

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 February 2007 and prior.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5-12,15 and 17-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-12, 15 and 17-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20070122</u> . | 6) <input checked="" type="checkbox"/> Other: <u>see attached Office Action</u> .       |

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1. Claims 1, 2, 5-12, 15, and 17-22 remain presented for examination.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The applicant should always use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors (i.e., see page 6 (line 17) "suppose"), general typographical errors, accuracy, assurance of proper use for Trademarks <sup>TM</sup>, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims (i.e., provide proper antecedent basis for "the" and "said" within each claim). Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.
4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 19 and 20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter since such reads on (encompass) software or program per se' (In re Beauregard (CAFC) 35 USPQ2d 1383) and MPEP 2106 (New EXAMINATION GUIDELINES FOR COMPUTER-RELATED INVENTIONS). Even though drafted as "A system", the applicant is reminded that an Operating System is software and/or program per se' specifically for claim 19 which makes reference to a method since claims cannot be hybrids.

6. The following is a quotation of the second paragraph of 35 U.S.C 112:

***The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.***

7. Claims 1, 2, 5-12, 15, and 17-22 are rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear:

- a) "said service flows"--claim 1 (line 16);
- b) "said outgoing Ethernet information packets"—claim 18 (line 9);
- c) "said one or more service flows"—claim 21 (10<sup>th</sup> line from the end of the claim).

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8. As to 7 (a-c) above, these are but a few examples of numerous cases where clear antecedent basis are lacking and not an exhausting recital. Any other term(s) or phrase(s) over looked by examiner and not listed above which start with either "the" or "said" and do not have a single proper antecedent basis also is indefinite for the reasons outlined in this paragraph. Also, these are but a few examples where term(s) or phrase(s) are introduced more than once without adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s). Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent basis for term(s) or phrase(s) which relied upon the introduced term. Failure to correct all existing cases where clear antecedent basis are lacking can be viewed as non-responsive. Nonetheless, should a response yield all claims allowable short *a few* cases where clear antecedent basis are lacking within the claims, a preemptive authorization to enter an examiner's amendment to the record to correct such would accelerate a notice of allowance over a final rejection. Such could be added at the end of an applicant's response with the following statement: "Examiner is hereby authorized, without the need of further contact by examiner, to enter an Examiner's Amendment to correct any cases where antecedent basis are lacking." if the applicant so elects. This does not diminish the applicant's requirement to correct all such cases not so listed in the example few given above nor prohibit any amendments after a notice of allowance by the applicant.

9. Phrases such as "adapted to" language suggests or makes optional but does not require steps to be performed nor limit a claim to a particular structure and thus does not limit the scope of a claim or claim limitation (see MPEP 2106 (II(C))). Therefore, the claim scope is open ended without meets and bounds and thus indefinite in claim 22 (line 2), as an example.

10. It cannot be clearly ascertained if claims 19 and/or claim 20 are dependent claims or independent claims. If they be independent, for claim 19, delete "method according to Claim 1", and copy claim 1's limitations therein while keeping in mind not to form a hybrid claim nor enhance the rejection under 101 given above; for claim 20, delete "utilizing the assembly according to claim 18" and at the end of the claim repeat claim 18's limitations.

11. For all claims, even dependent as they inherit the errors of their parent claims, such as claim 1 (lines 4 and 5), for example, something needs to be added (i.e., -or-) after "flow" on line 4.

12. Claims 15 and 17 should be cancelled and added as new claim 23 and new claim 24 since dependent claims must be numerically higher in value then their parent claim number.

13. Dashes (for example claim 2) at the start of a majority of the lines need to be deleted.

14. The claims are allowable over the art of record since the art of record fails to teach or defined the claimed limitations as argued by the applicant during the 31 January 2007 interview and as repeated in the applicant's response of 20 February 2007.

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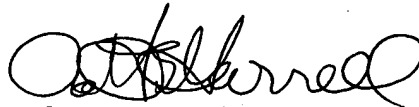
15. Allowable subject matter having thus been indicated, the applicant is required to proof the whole of this application (including figures) for typographical errors, specifically the claims; see paragraph 3 above this non-final Office Action.

16. **A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the data of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).**

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Thursday from 5:30 am to 2:00 pm.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew T. Caldwell, can be reached on (571) 272-3868. The fax phone number for all papers is (571) 273-8300.

19. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.



ROBERT B. HARRELL  
PRIMARY EXAMINER  
GROUP 2142